

KAUAI COUNTY HISTORIC PRESERVATION REVIEW COMMISSION  
Lihue Civic Center, Moikeha Building, Meeting Room 2A/2B

MINUTES

A meeting of the Kaua'i County Historic Preservation Commission (KHPRC) was held on March 5, 2015 in the Lihue Civic Center, Moikeha Building, Meeting Room 2A/2B.

The following Commissioners were present: Danita Aiu, Althea Arinaga, Pat Griffin, Anne Schneider, Patsy Sheehan, and Stephen Long.

The following Commissioner(s) were absent: Kuuleialoha Santos and Victoria Wichman.

**CALL TO ORDER**

The meeting was called to order at 3:01 pm.

**APPROVAL OF THE AGENDA**

Ms. Griffin: Before I get a motion to approve the agenda I am hoping you all are willing to reverse the order of Commission Education and New Business cause I think as we hear about the training it may enlarge our perception of the discussion. So is that something, can I have a motion to accept the agenda.

Ms. Sheehan: I so move.

Ms. Schneider: Second.

Ms. Griffin: Thank you. All in favor? (Unanimous voice vote). Opposed? Hearing none.

**APPROVAL OF THE MINUTES**

Ms. Griffin: Approval of the February 5<sup>th</sup> meeting minutes.

Ms. Aiu: I move that we approve the February 5<sup>th</sup> minutes.

Ms. Arinaga: Second.

Ms. Griffin: Thank you. All in favor? (Unanimous voice vote). Opposed? Ian I don't think Mr. Roberts requires that we take a vote to approve the minutes. That there seems to be some sense that we accept them as written unless there is a correction but the County wants us to formally approve them?

Mr. Jung: Yes we want a motion to approve them just so we can say, cause under Sunshine Law you don't necessarily need to take action on it but under new IPA law, which is the documents portion of it we want to say the minutes now become a public document because it has been finalized by the whole body. So the motion is what finalizes it.

Ms. Griffin: Thank you.

### **ANNOUNCEMENTS AND GENERAL BUSINESS MATTERS**

There were no announcements and general business matters.

### **COMMUNICATION**

Ms. Griffin: Communications. We do have this memorandum that went to the attorney for the Coco Palms applicant and it was very well written and we appreciate that. Any other communications? (None).

### **UNFINISHED BUSINESS**

#### **Re: Discussion on the status of the Certified Local Government.**

Ms. Griffin: Unfinished Business, discussion on the status of the Certified Local Government. I know that we asked about the CLG funds and the San Diego trip. Is there any other communication/information about it?

Mr. Hull: Aside from the training in San Diego.

Mr. Jung: I would like to introduce our Deputy Planning Director now.

Ms. Griffin: Congratulations Kaaina Hull.

Mr. Hull: Dee Crowell left. His last day was last week Friday. He served his time. He is working at Princeville.

We haven't received any further information about the status of the programs. However, all we have got so far is that they would like to send commissioner members and staff to CLG training in San Diego. That's all we have at this time.

Ms. Aiu: Who is they?

Mr. Hull: Sorry the DLNR has funds available for education. What it all boils down to is those funds would be much better spent on actual state inventories or nomination but they have a

timeline in which they have to spend those funds and that timeline doesn't afford (inaudible). It has to be essentially spent by the current fiscal year.

Ms. Aiu: Where is the inventory?

Mr. Hull: We haven't gotten it back. They still have some issues and concerns.

Ms. Griffin: And it's probably a good reason why there are going to have properties that are 35 years (inaudible). Thank you and do you have other things to report on the Certified Local Government?

Mr. Hull: Not at this time.

Ms. Sheehan: Is there one specific person that you talked to that is pushing this one?

Mr. Hull: For the inventory? (Inaudible).

Ms. Arinaga: If it's ok I just want to get back to the inventory. At the last meeting I think it was said that they were paid in full?

Mr. Hull: Yes the contract was completed and the work was done however, there was some issues DLNR had with the product and they are reviewing it on whether or not they can finalize it and approve it as the actual inventory list.

Ms. Aiu: She said she was going to send us the list as a draft. I have it in the minutes and I have it in my notes.

Mr. Hull: Ok I wasn't in that part of the meeting. Sorry I stepped out. I can run it by Anna.

Ms. Griffin: If you could follow up. I know in conversation that some were GIS inaccuracies on locations and things that are important to our future use of the document.

Ms. Aiu: True but we should have a look at it so that if we see things that is an omission to make comments and (inaudible).

Ms. Schneider: Is the inventory shown on the plat maps? Because if somebody comes in for demolition permit and it's not on the plat maps the guy at the counter can just sign off on it.

Mr. Hull: Yes the way the inventory works right now is just essentially tech knowledge and essentially we will review now if the structures are over 50 years old. Once that happens if it is

then they usually go and check with the inventory. For the most part the department generally refers significant changes going on the structure over 50 years old to this Commission.

Ms. Schneider: I have seen renovations going on buildings over 50 years old recently.

Mr. Hull: Well something that is not on the list depending on the type of alterations they are proposing, interior renovations not so much but essentially those that are affecting the exterior.

Ms. Schneider: They should be on the plat map.

Mr. Hull: Yes.

Ms. Schneider: When I was a planner (inaudible).

Mr. Hull: We are ultimately working everything on the GIS cause the plat maps, I mean those things are old and essentially the way it works is you mark it with a pen and then...

Ms. Schneider: But if the guy at the counter doesn't see, I mean I had people sign off on demolishing after Iniki and you know.

Ms. Griffin: I have another question. I am sorry to put you on the spot but I am just curious on this process. Is it normal that projects being paid before the project is actually completed?

Mr. Hull: I am just getting updated on the whole inventory. The main purpose of (inaudible) before was just to handle specific projects. I actually don't know the details of the inventory. I can follow up with that.

Ms. Griffin: Any other questions of our Deputy Planning Director? Thanks and how many of you are available to go to the conference?

Ms. Arinaga: I said I would be.

Mr. Hull: We have got a list of people. So we should be hearing back from Anna. We just have to finalize the purchase amounts.

Ms. Griffin: Thank you. So anything else on CLG?

## **NEW BUSINESS**

Ms. Griffin: So no other questions so we will go back now to new business and the first order of business is really saying aloha to our 2 commissioners that are terming out and I would like both of you to come up here.

Ms. Aiu: You are looking at over a hundred years. (Laughter in background).

Ms. Griffin: So the County nicely made these plaques for both of you. Danita and Patsy, Patricia W, I know we all want to thank you for your service and all the work you put into it and maybe we can get a picture with all the commissioners.

Ms. Aiu: Thank you.

Ms. Sheehan: Thank you.

Ms. Griffin: And you know what happens a year from now.

Ms. Aiu: They call us up again. (Laughter in background). We have now given ourselves the title Emeritus as such you can call us up for consultation. (Laughter in background).

**Re: Discussion of historic properties/structures located within the Lihue area that are currently on the County of Kauai Historic Resource Inventory as possible candidates to be nominated to State Register of Historic Places and/or the National Register of Historic Places.**

Ms. Griffin: So item D.1.a. is discussion of historic properties/structures within the Līhu'e area on the inventory as possible candidates. I actually was looking at that. Kaaina and I have talked about it because so much of what we do is reactive. You know people come in with permits and they want to change but there is a lot of our very short ordinance that gives us the opportunity to be proactive and our very first and our purpose is it says this article is adopted for the purpose of protecting, preserving, perpetuating, promoting, and enhancing, and developing historic resources of the County of Kauai and it talks about encouraging and assisting nomination of additional historic resources to the National and State Registers and promoting the heritage and use of historic resources as in to review and recommend to the State Historic Preservation Office/Division historic resources which (inaudible) the keeper of the National Register to advise and assist the State and County government agencies to carrying out their historic preservation responsibilities and to provide public information and education related to national, state, and county historic preservation programs.

And I know we will hear more and in trying to figure out where to start in all of this because in the inventory it talks about the Southside and Līhu'e I happen to have very specific information about a lot of buildings in Līhu'e and what's happening this complex of buildings that one over there the Piikoi Building just turned 50 years old. And this one will turn 50 years old in October.

And Moikeha Building, the round building, will turn 50 years old next October. This structure was designed by the man who designed the Seattle Space Needle and the original Ala Moana and the Ilikai. So this is a property that deserves looking at.

Currently on the National Register you have got the Post Office; the Museum; and the historic district that is comprised of the County lawn; the County Building; the Annex; and the Court House but as you move, excuse me the Museum which was the library. But going around the bend at Hardy Street which was pretty much the 60s the Convention Hall turned 60 last October and it was designed by the man Clifford Young who was tapped to work on the East West Center structures and hall and they wanted an international name and he had gone to school in IMPA and he had gone to school in IMPA to do the design but he is the architect of record, Clifford Young, and it's very 60s but it's also a very important building. When Clifford Young first designed it was for a hundred people and the County, this is new Statehood they waited 30 years for statehood they said no, no that is not big enough we are a growing community and make it at least a thousand seats.

Then across the way the ILWU building was designed by Albert Price and a lot of people know him because (inaudible) and Governor Burns they were able to start the State Foundation on Culture and the Arts but he also designed the Arizona Memorial. So we have got him both of them were presidents of the AIA Hawai'i Chapter and as you go down, I know that people, you know we don't the age to look at this but for a State Building for the National Register the school is over 50 years old and it was done by Ernest Hara whose son John is still well known architect and Ernest Hara was at the forefront of a lot of key buildings and with schools. He went over to Stanford at one point for a big conference to talk about school design.

So our State Building is 69 with the Library but we have got the, fortunately, the Police Station has already been condemned. That was designed by a really find century architect named Guy Rothwell and when it was designed some of you who grew up here would probably remember it if you had reason to go to the Police Station but it was built with a central court yard with a fountain in it and it was only later that they had to close it in and you know get more administrative.

We have another building in Līhu'e that they are saying Guy Rothwell is also the guy. The Bank of Hawai'i Building, that building was built at the same time as the County building but Guy Rothwell in the 30s he had gotten so popular if you look at the old Board of Supervisors minutes the County Fathers wanted to put a big roof like that on top of the County Building. He actually was responsible for the roof that is still there. He also designed the fabulous Shell Station over on Kūhi'ō Highway and it was designed, I had been reading this book, I have this book called Gas Stations and in those days there was this intent to make these thing look cultural and have little chalets and (inaudible) and this one is really unique. It was built and now has this yellow sort of sign on the top that Shell Station but it was built to look like a Hawaiian hale and it has these

stone columns. So there is that building too. So I have given County buildings that are 50 years; State buildings; union buildings; and private structures that we can look at.

Ms. Schneider: How about the building across the hospital. I think the hospital is using it now and it's been renovated.

Ms. Griffin: On the side street? Dickey actually designed our original hospital building and those were the nurse's quarters and it's built on four pieces because in those days so few people did have cars so they would stay there during the week and then go home on the weekends. Yes and that also is a possibility. And there are private. Iliahi the old Caleb Burns house is a possibility and of course Kilohana.

Ms. Schneider: So do we have a list? Is this the inventory that we are...

Ms. Griffin: I do not know that these 60s building. It would be on this inventory but the last inventory was in the 90s and of course they weren't 60 years old.

Ms. Schneider: Right so do we need to make a list of them all and plot them out on a map?

Ms. Griffin: I guess I have talked along time about and that's a good question cause I know Kaaiana is going to talk a little bit about process and possibilities.

Mr. Hull: I will try to be brief. Yes so what we had kind of envisioned with this is it is one of the responsibilities and duties of this Commission to nominate sites structures or areas to the Historic Places Review Commission to be put on either the State Historic and or National Registers.

Ms. Schneider: We don't need permission from the owners?

Mr. Hull: Amazingly in fact no. You can nominate a site or a property or a building to be on the register for which the owner will be notified by SHPD. If the owner objects it automatically boots it out of the possibility for the National Register but it doesn't take away the possibility of the State Register. If the owner objects it actually, if SHPD feels that it is a site that it agrees with the nomination that this body does at the objection of the landowner then it moves into a contested case hearing and it still can be listed on the register at the objection of the owner.

So it is relatively simple process to initiate. Essentially any person can nominate a site to be on the register by filling out the National Register forms and accompanying with them just a map of the site and photo documentation of the site and in the form of which you are filling out the reason why it's being nominated and it can either be examples such as historical significance of the structure be it architecturally, culturally, or associated with an event or historical person and it was kind of getting into what you feel is the case to be made for a site can be provided and essentially the Commission and the State will review and decide whether or not it agrees with the nomination.

Ms. Griffin: Does anybody have a question?

Ms. Sheehan: I have a question. If we are talking about government buildings I mean could you put them together? Why would the government contest that? Could we assume the government would want?

Mr. Hull: The issue with putting it on the register essentially is there are of course tax credits and grants that can be afforded for being on the register; however, the problem is it can be difficult to place any alterations on the structure once it is accepted on the register. Any exterior additions once the site or the structure is on the register, any proposed exterior structures or additions have to be noticed to the DLNR, SHPD Division.

Ms. Griffin: That is true even if it's eligible for the National Register.

Mr. Hull: That is true but above and beyond that is that once you are on the register any significant alterations in particular that DLNR, SHPD feels are significant would automatically require going through the HRS 43 process which is the environmental review process which can be costly which is one of the biggest reasons landowners are hesitant because any alterations they want to make be it additions or removal or outright demolitions would require them to go through a fairly lengthy public process environmental review.

Ms. Sheehan: The reason why I am asking because that they are supporting the fact that they created this Certified Government and they want to foster preservation and so I mean it's kind of like here I am doing it you should do it.

Mr. Hull: I think to a certain degree on like, as far as (inaudible) the model that would be the best approach to handle but I can assure you should this body to decide and I am not saying not to we will review that if you want to go that direction but should this body decide to nominate this structure or any other County structure I can assure you that the Capital Improvements Manager for the Public Works will call me with some issues and just because it can be more costly and more timely for projects. That's not to say that it shouldn't be done.

Ms. Sheehan: I was just curious to see how much support it would be because there are restrictions and so you know it's like ok board everybody has to give it all so there is a hundred percent support ok County here we go.

Ms. Griffin: Ok our very brief ordinance talks about providing public information and education relating to these programs and keep in mind we have a National Historic District with the Kauai County Building, the County Annex, which is a Hart Wood building by the way, and the State Court House. So it's not like the County and State have not you know taken part.

The issue with these buildings is that we are just beginning to put on a new set of eyes to appreciate them and I think that, that next, next month Ian will talk about and Danita and I were eating at the conference last December, the CAMP, and they talked a lot about how you start to get by and how you start to make allies. And one is giving awards but that sense of starting to



have that ripple effect and to some extent it starts in a place like Līhu'e which is the County seat. It starts with our public government.

Mr. Hull: Yes and I think right now I wouldn't concern yourselves too much with the in and out details of going through the nomination process with an objecting landowner. I think the exercise that would be best to kind of focus on is to begin to look at buildings in Līhu'e, sites or structures that you guys feel are possible nominations just to begin the discussion foundation and then once the body comes up with a list that the Department can work with you guys to come up with a list of sites that could be nominated.

And then secondly, it would be prudent to also eventually once that list has been established to each out to the landowner. Cause either way they are going to be notified and if they are already willing landowners it's much more easier to go through the process with willing landowner. That's not to say that the objecting landowners will automatically take the policy of not going there. There may be objecting landowners it's just that it's a much more thorough process and is required more research. Mr. Jung is going to have to appear in front of a few more contested case hearings.

But right now in the real preliminary stages just to kind of get the ball going is kicking around some ideas and of course focus on specifically but for everybody to begin the exercise of this and ultimately, you know hopefully within a relatively short period of time we can put a list together and we can commence and move on (inaudible).

Ms. Griffin: So are you recommending, Kaaina, that we start with a letter to the landowner saying that we got this unique and special property that should be celebrated or whatever we say or making a list and then contact. You know what are you recommending in terms of procedurally?

Mr. Hull: Procedurally the best approach would be, is being that we are having to speak on this discussion at this meeting is perhaps we could email each commission member the inventory list for Līhu'e and then taking you guys to each individual site and perhaps at the next meeting or a later meeting the body can come together with actual, specific properties to discuss and also to if you guys have specific ideas you guys want to go definitely shoot it to email or email me and or Shan.

Ms. Griffin: Don't email all of us.

Mr. Hull: You can kind of go through each of those properties.

Ms. Schneider: Maybe once we go through the list we could a site visit and go look at them.

Mr. Hull: If you wanted to that.

Ms. Schneider: A walking tour.

Mr. Hull: And that can be done individually or if you want to have an actual meeting. I would recommend that if you wanted to do a meeting we have it on a later date.

Ms. Arinaga: I have a question. If the landowner closes the door and says he is not interested does that close the door for you?

Mr. Hull: For the Department not necessarily.

Ms. Arinaga: But for pursuing this.

Mr. Hull: Legally it still can be placed on the Register at the objection of the landowner. It's probably not the best route necessarily to go but that door isn't automatically closed once they object. It is say like when you get into demolition of historic sites, that doors with a certain degree does get closed because of the fact that SHPD is the conundrum of either you allow them to demo with mitigation ie photo documentation or you condemn the site with SHPD doesn't have the funds to do it so that's kind of how that works with historic structures and demo but as far as placing them on the Register the door doesn't close when the property owner objects.

Ms. Arinaga: I was asking because there has been some talks about developments in Keālia. So that particular area? So you know I just don't know what the future of it, of the developments would be.

Ms. Schneider: Who is the landowner?

Ms. Arinaga: I don't know it changes so much I cannot keep on top of it.

Ms. Griffin: Check with the National Register which is on the web on criteria to make sure that cemeteries are category. That's the first place to start I think.

Ms. Arinaga: Ok.

Ms. Aiu: Are you just talking about the burials or are you talking about the whole?

Ms. Arinaga: No, no there is a particular place in the midst of well it's not sugarcane anymore but...

Ms. Aiu: But are you wanted to talk about your area where you guys live?

Ms. Arinaga: Yes, yes.

Ms. Aiu: You were concerned about development coming up in that area?

Ms. Arinaga: Yes there has been talk about that.

Ms. Aiu: Ok what I would say, this is a real touchy subject and maybe I am glad I am out because I know people with these homes who don't want to be part of the National and I can understand how this works for people.

Your situation would be you would try to get a buy in from all of the people who live there. I think the whole important thing because we are small is a buy in because you don't want people to be mad at you. That would be a form of protection for your little community up there with your buy in, you guys are all but I don't think there was a new house up there since forever right. I mean you folks have a wonderful place where nobody else is around and everything. I would think if you could get your community to buy in. We couldn't even get the whole Kapa'a to buy in when we tried to do zoning there right. You know so it's not an easy thing.

And then you got the people from Hanapēpē which I never understand why they can't get the bridge on the register cause they have been trying and trying and keep coming and they want to do it so badly. I would start with them cause they just wanted to so badly. And then we tried to put our Heiau on the register and we couldn't get it on the register either. We ended up taking a big financial loss but because the heiau was there and the Royal Hawaiians our family decided well we would sell it to the Land Trust to protect it. So we bought in but SHPD didn't buy in for us for getting it in.

So it's not that easy but with houses and personal cause you can fix the window or roof or something. I was thinking pretty soon my little rental going be 50 years old and I going have to fix the window and going cost me \$50,000.00 and I going have to put it on the Register too. So I can understand people not wanting to do that. So the buy in is really important.

Ms. Griffin: I have purposely did not give examples of residences for that reason because I in fact looked at Līhu'e Town Tract they are significant vernacular structures that were done in the 30s and 40s. And at this point when you talk about an historic district you can have a certain number of nonconforming structures which once they were replaced after Iniki you are definitely nonconforming. Umi Street, a lot of those residences are turning 50 right about now too but I think that, that's in a step or 2 away.

It is much more of a challenge like Danita is saying to start to get that in and so it goes back in terms of education it seems like (inaudible) is to get a better wrap for the National Register because for when you read about communities and I think it's in one of the documents that was on our NACP, on our thumb drive that Ian was talking about he got the information from that typically property values rise and neighborhoods improve. But like I said in this stage looking at single structures, commercial structures or government structures might just be more, yea before we start calling ourselves and I have a concern when you start looking on the inventory. A lot of them won't show up on the old inventory. So if it is possible, even on draft form, to get you know this little chunk of the inventory to people so that we can look at it. That would be helpful.

Mr. Hull: Yes we will see. I have to check back with you guys on that one.

Ms. Griffin: So where are we? I think we should have a motion on how to proceed and Kaaina maybe you can help our motion maker on the right verbiage.

Ms. Schneider: I make a motion that we review the Līhu'e area, is that what we are trying to do, and if possible take a look at it physically and put it on a map and then evaluate which structures we could possibly nominate.

Ms. Griffin: Ok is there a second?

Ms. Arinaga: Second.

Ms. Griffin: It's been moved and seconded that we review historic structures in Līhu'e; locate them on a map; and hopefully take a walking tour of them; and evaluate them to go further on the selection process on the register. Further discussion?

Ms. Arinaga: Yes. We are looking at preserving we need to know that the correct pronunciation is Līhu'e. Līhu'e.

Ms. Griffin: Līhu'e.

Ms. Arinaga: Just for the record.

Ms. Griffin: Any other comments. Hearing none all in favor? (Unanimous voice vote). Opposed? None the motion carries.

Mr. Hull: If I might interject.

Ms. Griffin: Yes.

Mr. Hull: So as I think over the course of the next month while you folks are looking at that list if you have any questions or concerns or looking at a particular properties or sites just feel free to shoot me an email or give me a call and we can begin to look into those specific ones. So if you guys come back say next meeting you say I have this site that I have interested in and staff can be prepped to give any kind of evaluative.

Ms. Griffin: Thank you so much for your help.

### **COMMISSION EDUCATION**

**Re: Panel discussion on the National Alliance of Preservation Commissions CAMP (Commission Assistance and Mentoring Program) training that occurred on Maui.**

Ms. Griffin: Ok Commission education. Mr. Jung.

Mr. Jung: Shan is going to get the copies of the power point. Ok continuing with our training on preservation. I got a multitude of information off the thumb drive that came along with those of

you that went to the CAMP training and for those of you who did not go to the Big Island basically Commission Assistance and Mentoring Program and what they try to do is educate the Commission on their role, their responsibility, and procedural issues with acting as a commissioner. It originated out of the National Alliance for Preservation. So it is one of their programs that they created to try and education commissioners on not just the procedural aspects of being a commissioner but also the substantive aspects of how to apply standard and what not.

So to go through this I think what I am going to do because there so much material try and break it out into to 2 sessions and Danita and Patsy if you guys want to come just to learn, you are certainly welcome to come, if you want to come and watch the presentation you are welcome to come as members of the public.

Ms. Aiu: Thank you.

Mr. Jung: So with the first round we will be talking about 2 out of the five items that were discussed at the CAMP session. One is the framework of local preservation and two is the preservation law and procedural due process. The other three are more of the substantive issues that you guys get involved with such as planning, surveys that we will talk about later and design review and design guidelines when you look at rehabilitating structures and their historical significance. And the last one is public education and outreach and the reason the last one gets forgotten about but as I went over the role and duties established in Article 14, your powers, one of the four things noted as your responsibilities is to promote education and outreach for preservation of historic sites.

So to start off there is resources and as we open up the CAMP dialogue they asked does anyone know what the Advisory Council of Historic Preservation and I didn't know. I had never heard of it before. I am sure some of you have but that is certainly one resource and so is the National Park Service in Hawai'i. It's been in the news quite a bit recently with how they came over to sort of take over and help rehabilitate SHPD and sort of gain control and so they could (inaudible) themselves once again. So Park Service has been sort of the news especially here in Hawaii.

The State Historic Preservation Officers for our office it's through the Department of Land and Natural Resources, SHPD, which all of you know but what I learned is in other jurisdictions there are SHPOs in Local Community Government right where you don't have this State overlay of control over historic preservation. Cause in Hawai'i you have this two tiered system of State and County land use laws and some jurisdictions, actually most jurisdictions you will have a State framework but then the whole framework is delegated to the counties or the cities to control their own preservation protocol and the same thing with land use/planning. So the State of Hawai'i is one of 2 last remaining dual jurisdictional states in the United States. And then the last one is the National Trust for Historic Preservation and that's a nonprofit and we will go through these.

What is the Advisory Council on Historic Preservation? It's an independent Federal Agency that promotes preservation, enhancement, and productive use of our nation's historic resources. And this is coming straight off of the material and what their role is, is to advise the President and Congress on certain policies relevant to historic preservation. Right and there is also a forum there established under that advisory panel to influence Federal activities and various programs and one whatever policies they need or they feel need to be addressed at the time when certain historic properties are being affected. Is everyone familiar with the Advisory Council on Historic Preservation? Has anyone had any interaction with them? For me working here in the last 5 years I have not.

Ms. Griffin: Some things go to the Advisory Council in Section 106 and you know they will review that kind of projects. So it's not always a direct relationship but they do have this overarching interest in preservation activity.

Mr. Jung: And I know they get consulted through Section 106 but I don't know to what degree they can call and certain stuff you try to look up because it seems like it would be pretty top tiered on how this council started commenting on relatively small Federal projects here on the Island but it would be interesting to see how far the scope of reach really is.

Ms. Sheehan: So who is on that independent Federal Agency? I mean who gets on this? I mean is it twelve people?

Mr. Jung: I don't know it wasn't in the material so to try and identify that.

Ms. Arinaga: So was there representation from Hawai'i on this?

Mr. Jung: They were just identifying ok as commissioners what are your resources to get information on preservation. So these are the 4 that were outlined. There was a 5<sup>th</sup> the Tribal... it was more relative to the United States where there is tribes. Let me get that for you. It's the Tribal Historic Preservation Officers. So it appears just like a SHPO because the tribes have their own independent sovereign control they probably have their own designated SHPO.

Then the Park Service what do they do? It's a bureau within the Department of Interior and all of you know this right and they seek to preserve natural cultural resources established in what they call the park system and then they cooperate with various partners to extend the benefits of natural and cultural resources to try and identify certain conservation efforts as well as preservation efforts.

And then what we have here is probably more for you folks to be reviewing is the SHPO and they administer the national historic preservation programs through the Certified Local Governments which in the County of Kauai and through our ordinance which is now (inaudible). So they have a variety of tasks one is to locate our resources; nominate historic resources to the National and State Registers however the system is set up whatever state they are coming from.

They want to foster historic preservation programs at the local government level such as education and outreach; assisting/creating the ordinances that we have and they would actually have to approve them and make sure it qualifies like what they recently did with the Big Island when they became a Certified Local Government. And then they provide funds for c preservation activities just like how we are trying to wrap up this inventory, those funds came from the SHPO through the Feds.

So this the National Trust for Historic Preservation they seem to actually have the most influence over things it seems like from the material because although they were created well before the 1966 Act they are a private nonprofit so they have significant lobbying influence over certain decisions. They provide leaders, education, and advocacy, resources to save America's diverse historic places and revitalize our communities. And the reason they started this was apparently because they saw a need to save some of the historic properties that were starting to be demolished over the United States back in the late 40s and early 50s. So they were on an approach to try and say look we need to save these resources.

So those are the 4 overarching resources that you have to go and what I will do I will get their websites for you and send them out in an email if you want to take a look at them but there is a ton of information on each of those websites. SHPD has quite a bit of information on their web site. This has web site has quite a bit of information too.

So getting in to preservation law and we didn't have too big of a discussion at the CAMP program but there was a lot of talk amongst the commissioners just trying to identify the 6E program in Hawai'i and where it came from. And to me it all started here with the National Historic Preservation Act where the structure that created the format to create local government control because inherent in the authority that was delegated by the State to the counties is the issue of police power right so under police power that gives the power for the government as the County to affect historic properties through permit entitlements.

So if something comes through for a permit or a request of some sort that's when the police power kicks in and say ok they are going to affect an historic resource for public and moral welfare we want to preserve this item that we can start looking at mitigation to help protect this thing. So Federal Government I don't know if any of you are constitutional scholars or anything but if you look at the structure of the Constitution you get to the 10<sup>th</sup> Amendment which says the Federal can do this and they delegate all the authority to the State and then the State can delegate the authority to the County.

So all of that gets wrapped up in this police power that Fed Government gave to the State Local Government so that's how we create our level of police power through the enactment of the National Historic Preservation Act because the Feds said State you guys can do this and the State says ok Local Government you can do this with 6E. So it's by function of tiered system of laws that basically pass the power down to the Local Governments.

Ms. Sheehan: Ian we are an advisory group here so this powers come to the County and the County has a police power through what? I mean we don't have any; this group doesn't have any power.

Mr. Jung: We are going to get there but the power of influence is what comes to you because as you see from one of your roles and duties is to advise not just the Planning Department but the Planning Commission on further entitlements as well as SHPD, provide comments to SHPD. So even though you are advisory you know it still gives you authority to say here I want to do this by way of recommendation and that recommendation gets floated through Planning Department and to the Planning Commission. So you are a wing of the Planning Department/Planning Commission by way of recommendation suggests what should be done to the permit or entitlement by the Planning Commission.

Ms. Sheehan: But the enforcement is coming through the Planning Commission or the Department.

Mr. Jung: The enforcement of conditions comes out of Planning Department/Planning Commission depending on what type of permit it is but the destruction or demolition of historic resources falls under the State Historic Preservation Review Commission. So they would have cause it's sanctioned as we have learned out at Prince Kūhi'ō Park right when some, who was it one of our former, Roland Sagum, he pled guilty to taking rocks. So Congress created this structure in response to what was reported to be grassroots aversion to unreasonable destruction of important places. So stemming from the National Trust for Historic Places in '49 and it took a number of years to really get going through the Fed program to get Congress to enact the National Historic Preservation Act of 1966.

So what is the process then? Alright we go through the historic process. The State Constitution and State Plan recognize and encourage the preservation of historic and cultural resources. So that abundantly clear through not just the Constitution but the State Plan and then implemented into 6E right when the Legislature adopted the State Historic Preservation Division's requirements.

So 6E contains the statutory frame work for historic preservation. I think you all are familiar with that but one of the things that I think is forgotten is the primary responsibility for administrating/dealing with HRS Chapter 6E is with DLNR cause I know at times they want to come here and say you guys hire your own architect or archeologist and you guys hire your own historic architects so you can evaluate independently what should be done here. But at the end of the day you and the Planning Department are only advisory to what the processes is set up through the historic preservation review process in 6E and its accompanied Kauai administrative rules.

So in 6E right the counties are encouraged to promote historic preservation by 2 items right. Establishing programs and commission to promote and preserve develop historic resources and



two, by providing regulation special conditions and that's the bulk of what you see on land use permits and restrictions on how you preserve historic properties. And that goes by way of DLNR as well by the mitigation plans and what not.

So what does 6E protect? It covers historic properties, burial sites, and aviation artifacts. Those are essentially the 3 items that are relevant. And one of the bigger issues and there is a bill that was floated last legislative season to change the definition of historic properties to only those that are on the registry and that would have taken out the 50 year old designation. Which it failed so we are still with the 50 year old designation but one of the interesting things out of our own inventory is the fact that they looked at projects that are 35 years or older right so they anticipate them being fifty year old 15 years from now so it will put it on the list. I had a little bit of heartburn from that just because we have on our list and someone says it's going to be on the list but the reality is it can't go through the process until it meets that definition of historic property.

So the administrative rules which we will be talking a little bit about today relative to the nomination process. They also outline the 6 steps of the historic preservation review process and I think I passed this out some time ago if you guys want another copy. This is Native Hawaiian Legal Corp prepared their view of the historic preservation process and I try to keep it handy just to make sure we follow not just our interpretation of it but see how interpretation applies with theirs cause they are the ones that are going to sue on a lot of these issues.

Ms. Griffin: When you email us the websites for the various agencies if that's a PDF or something that you can include in our email that would be great.

Mr. Jung: Yup.

Ms. Sheehan: Do you think that there will be a push to change the definition of historic property because it failed no but is it going to be something that people are going to keep pushing?

Mr. Jung: From what I heard is the big push last year was because of the rail project and because there were going to be lining out through a lot of properties that are over 50 years old and having it condemned and that was one angle to stop the rail but apparently it failed and I think if it was an overreach because we don't have much on the registry.

Ms. Schneider: But it just happened in Honolulu some midcentury modern...

Mr. Jung: Right and I think that's you know I don't think it made crossover even I think it died pretty quickly.

Ms. Griffin: But it is because as Ann said is one of the arguments is that there are so many properties that post war residences that are turning 50 years old that becomes an administrative nightmare and we are just starting to get a sense of how to look at these in terms of integrity and what's of value and what's not. I have a question about that too because Federal statutes should trump State ones and State trumps the County and the Federal talks about 50 year on the

National Register or eligible. So I am wondering even if that became a law it sounds like it would be challengeable.

Mr. Jung: Oh yea I think not just the challenge ability of the because of the preemption issue but I think you would have a problem where Federal money would not flow because they are not following guidelines that the Federal Government established in the Preservation Act of 1966. So that could be another reason why they fail but it would be a very interesting issue to argue and it specifically outlines 50 years old then it would be trumped and I think this is important about the upcoming discussion about what 6E also does and it creates Hawai'i Historic Places Review Board which takes a look at what properties should be entered in the Hawai'i Register of Historic Places to recommend those properties either to the State or National Register of Historic Places and they are also there to assist DLNR in matters pertaining to Historic Preservation especially when it comes to policy making.

Ok so what are the duties and this is quite lengthy but I wanted to highlight two of em. This is in your ordinance, straight out of your ordinance. So number 3, the third bullet there is one of the items we have on the agenda today to discuss to review and recommend to the State Historic Preservation Officer those historic resources which should be submitted to the keeper of the National Register.

So you have the authority given to you to review and recommend to the State SHPO what should be designated on the registry and I think that is an important role because it can start here. So you can start looking up properties and say hey this is an important site let's move forward do the review/the recommendation and see where it goes. It is quite an extensive process which I am going to talk about a little but the point being is that it can start here and then SHPD can do a lot of them like work.

And another important point and we will go through it in your pleasure is the first bullet point there to advise and assist Federal, State, and County Government Agencies carry out their historic preservation responsibilities. So that's why permit entitlements come before you whether it's a Federal, State, or County project or even a private project because there is case law that basically says we have independent duty to make sure we comply with all laws and when we comply with all these laws we need to follow 6E process.

As part of the 6E process the Planning Department and or Commission depending on where the permit is originating from will send down to the Commission for comments on certain projects and like I explained at our last meeting that there is sort of a distinction between us and the other counties because our permitting process is split into 2 jurisdictions. Right you have got a zoning permit and a building permit.

So a lot of the times we say you can't pull your building permit until you get all of these requirements done. So they will issue the zoning permit with the stated conditions and then they got to fulfill those conditions before the building permit application point. It's a little different

when you have a Class I or II zoning permit or it's just bundled up into one but for the big projects where it's most likely going to be an impact of historic resources then that's an available mechanism to make sure project s comply with the conditions before they actually pull their building permit.

Ms. Schneider: It doesn't say anything about demolition permits.

Mr. Jung: It does not right and I don't know if the building permit if you need a building permit demolition permit but not a zoning permit from what I understand they have always triggered a zoning permit to show what was on the property and what was coming off just for tracking purposes. That's the way it was explained to me.

Ms. Schneider: I'm just noting the things aren't on the plat map then you can come in and get a demolition permit.

Ms. Sheehan: Ian I had a question. If we are to advise and assist these are scheduled meetings and everything I mean sometimes we are meeting on some things that we would like to defer but it's going to the Planning Commission so we really can't assist or give our opinion you know some times it just doesn't jive and we could say we can give our opinion after the fact but you have already gone to the Planning Commission.

Mr. Jung: Right and then it would get there in terms of what your responsibilities are for any good applicant it they will get their ducks in a row before the point of coming to the body right and in terms of Coco Palms we can see that there are issues about making sure everything was tight with the agencies before they actually get in front of the body and make a decision because a good part of doing an application is doing your pre-consults and making sure ok what do I need to get lined up.

Step 1 what are the SHPD requirements. Did you meet with SHPD? You have got to make sure you are meeting with the right people because if you meet with the head and they say yea, yea no problem you are going to have to work with the line staff right. So you have got to make sure that the line staffs are on board with what your responsibilities are and you can start processing before you submit the paperwork.

So it's, I think it's an important role in doing the application process, the pre-consult process and a lot of people don't take advantage of that and it puts you folks in a disadvantage right so it's always good for an applicant to get everything ready to rock and roll. Get all of their comments in before they actually appear but the problem we face is that you know once the application is being deemed complete the agency takes longer than they should and I am not just blaming SHPD but things get held up and then the Planning Commission has statutory deadlines.

Ms. Schneider: And what happens if they don't do the statutory deadline?

Mr. Jung: There is a bunch of exemptions to this but under...

Ms. Schneider: Like with Coco Palms.

Mr. Jung: Right so the Hawai'i Administrative Procedures Act, Chapter 91 has a provision in there, 91-13.5, that has something called the automatic approval law and so if you don't take action within a prescribed time or a reasonable time then the permit can be deemed automatically approved.

Ms. Schneider: Is that what's happening with Coco Palms?

Mr. Jung: No, no we still have time on that. There is several contentions on that where the applicant says no problem we will give you the extension because we need to provide more information even if under a situation where the applicant doesn't fulfil their responsibilities than we can state that and preserve that as a defense to that automatic approval law. Hey we are supposed to get this to the commission before they made a decision.

So there is a pretty decent defense to that automatic approval law but it's all on a case by case situation depending on what happen right. The most recent experience in case law we have is the Kauai Springs case where they inserted a variety of arguments but in that case in came down to the fact that the applicant had agreed to waive by just allowing the meetings to continue and say ok I will agree to this date. So it applied and that is what the court ruled on in that case. So it's interesting in terms of how it applies but you know for us we just want to make sure we stick to those deadlines cause we don't want to face that type of situation right.

Alright so what are the other issues and you know I could go on for hours about these issues but some of these were brought in discussion and primarily takings and due processing and equal protection but in the materials that are provided and I am going to email this to you folks just because it's quite lengthy but basically it gives just a short and it's pretty good it's well written actually. Sort of summary of what all these issues are like number 1, Commission Authority, you don't want to go outside your boundaries of what your responsibilities are. So if you start looking at landscape verses how the structures are going to appear from an historic standpoint then you might enter issues of going beyond your commission authority to act on certain things.

Ms. Griffin: Maybe because context you know landscape if you look at Kokee and don't look at the hydrangeas you are missing an historic context just to give you an analogy. Also for instance in the US Post Office the National Register nomination defines the entire property not just the building which a year or two ago when a long way to saving the monkey pod that was going to get cut down.

Mr. Jung: Yes and that brings up a really important point where your commission authority is as good as the argument in the defense of what you can present as to why you believe your authority extends to a certain area and you lay that on the record that give us trying to defend you folks a better basis to hang our hat on in court right because if you can articulate why it is you are doing what you are doing then that gives us a good reason to defend it and a good

opportunity for the judge to respect the context of which you are bringing to your preservation efforts. So your commission authority is limited but again you can expand the scope by having rational basis to get there right.

Number 2, individual property rights, you know property rights in the United States is fluctuating where we do own our property but our property is limited by the implication by what we call the police power. So you can own your property but if you want to do something with your property then you are going to submit yourself to the zoning code, the preservation codes, or even in some cases the arborist code where you can't cut down certain trees. So you do have individual property rights but there are tempered with the police power that's delegated from the Federal government down to the State and County.

Then there is number 3 is takings and this is where the presenter spent the most time on. There is 2 types of takings. There is a physical taking were its like condemnation and eminent domain and there is regulatory taking which is the more common theme in land use entitlements where a regulation via ordinance goes too far and partially devalues the property right cause you don't get the full value of what you wanted your property to do and then you can order a regulatory taking and strike that provision of the ordinance or a law and another aspect of it is a regulation via permit condition or exaction which we have a good case which just came out which is the Coons case a lot of land owner advocate groups are celebrating this case because it redirects how the private property rights are and basically the Coons case is that you can't extort landowners out of fees.

So the government can't act like we are in a candy store picking things away to put on applicants for responsibilities. So any time there is an impact you have got to mitigate it to a point where you have fallen into a pen central standard where the impact of the projects got to be roughly proportional to the project and it's got to have a nexus to what the project is going to impact the community with.

So it's sort of a 2 tier prong on how to apply the regulatory takings analysis which is very complex, you know very back centered but the reality is there is you ask for too much then we could get wacked for it and a good example of this was Coconut Plantation cases on the east side not anything to do with historic preservation but they wanted the County to build a new road and a new water tank and expand the wastewater treatment facility in Wailua and the Courts struck that down and said hey you can't do that much of a grab so the wastewater treatment facility as well as the new road all got struck down from that permit conditions.

Due process and equal protection that speaks for itself, you have to give somebody the opportunity to be heard. That's why you hear me say every now and then say let them speak and say their piece. So you have to give notice and opportunity to be heard in the proceedings and then equal protection you have to treat everyone the same right you can't treat one group differently from another.

And then the 2 subsequent issues down there religious freedom and freedom of speech, those are rarely brought up in land use cases it's the religious land use and institutionalized a person that basically says you can't discriminate for one church over another. The first amendment, freedom of speech same thing you have a right to say it. This more applies to signs so if you folks want to get involved on what these signs should say and how the signs should look then it sort of doesn't promote a government interest we try to strike down certain signs in terms of what they say then that could inhibit someone's freedom of speech. Ok this is like you know very complex but it was raised so if anyone has any questions about any of those six items we will try to indulge ourselves with it.

Procedural due process, this is sort of the fourth thing for us relevant to our potential automatic approval issue. It doesn't say, our rules don't say when you have to meet accept for at least once quarterly. So if nothing is on the agenda you can always ask that the meeting be deferred as long as we meet once per quarter. And then the real issue here is the provision where it says within 15 days of the meeting the Commission shall forward any comments and recommendation they may have concerning the matters of the Planning Commission for consideration. So we sort of impose a deadline here. You can always ask the Commission to defer the matter so you can have more time. That's always an option but you have to be cognizant of the Commission time you have.

So also with procedural due process one of the things we did at the CAMP seminar or conference is do a mock preservation meeting and I think it was interesting for everyone to see how each role would be acted out. It was kind of fun so we don't need to do that cause we are doing it now but Danita or Pat I know Victoria is not her but do you guys want to share about that experience.

Ms. Aiu: They gave us roles to play. We felt like the grandparents. We were the oldest. We have been in existence since the 80s right and most of them were new so they kind of didn't know things and so that was the reason for this that would play out. I don't even know if the Big Island people even had a meeting ever.

Mr. Jung: They were having their first meeting right after that.

Ms. Aiu: Ok so they had us play acting and people come out and say foolish thing and you want to go like, just like how you say wait for your change. It was about what kind of comments you can make. What the lawyer does. Do you want to say anything else?

Ms. Griffin: You might bring this up next month but one of the aspects of our doing this little practice session was to show how we make our decisions that can be validated and referring as we state that a person's project does or more importantly or doesn't fit in to the Secretary Standards conditions and so in that legal aspect being able to say no you want to take out all the window and sliding glass doors on this 100 year old house doesn't fit into the Secretary of Interior Standards in number 7 in this commission and so it's a protected kind of thing and I think that became, we were told that, but it became pretty clear in sitting around the table and

fortunately being on the advisory where we have I think never been sued but regulatory commissions are at risk when they go off beyond their authorities.

Ms. Schneider: Planning Commission?

Ms. Griffin: Yes and they are regulatory so you know for me that was something I was actually was one of the people that was tasked to sit up there so it was probably more enjoyable for me than it was (inaudible).

Mr. Jung: I think Pat identified the trickle effect because what happens is you guys can make a recommendation to the Planning Commission and the Planning Commission adopts your recommendation and they have gone too far and they get sued. So they are the ones getting blasted.

Ms. Schneider: So we need to be able to uphold our decision.

Mr. Jung: Right, exactly because a lot of the commissioners respect you know the theory as the expertise you have in historic preservation. It's just like Engineering Division where they are the experts in roads so they say one thing Planning Commission says I am going to listen to that because they are the experts so they apply. So same thing with you, they say well if that's the role of where the Commission wants to advise SHPD and the Planning Commission, this Commission wants to advise SHPD or the Planning Commission then we are going to vote that.

Ms. Schneider: So Ian does the Planning Commission ever read the minutes from this Commission rather than just getting the recommendation?

Mr. Jung: That I don't know. I don't if they have ever requested but I do know they ask for the memos from SHPD and the Commission and sometimes they have questions and then me or the planner tries our best to explain what happen at the Historic Commission.

So in summary the preservation law I know they were trying to put a bunch of information it's about 10 slides but we have our 14 in the CZO right and that basically implements the tenants of Chapter 6E right and then we have our Historic Preservation which is provided by the State Constitution and then says ok States you need to implement this which basically legislature implemented as Chapter 6E right and then 6E spells out procedural guidelines through their Hawai'i Administrative Rules.

So we have our code and then there is State law and then there is the State rules implementing the State law. So again it is the tiered system ok and then the role of course as we have been discussing of this Commission is to aid the Planning Department or the Planning Commission and helping it make its recommendations through a final say by SHPD.

So it's a little different from what I think the Colorado speaker spoke to because they were a regulatory board taking action on permits in terms of historical elements verses this board where

it's a little freer in a sense that you can have a little more dialogue because it's advisory to the Planning Commission. So from a procedural stand point we don't really stick to every, we don't have procedural rules which we work on getting but from a procedural stand point this Commission is not as susceptible as the Planning Commission to getting wacked for procedural due process fault because they can't sue you directly (inaudible). I have been looking at some of the rules to try and figure out procedures to have in place here so we can try work on that this upcoming year.

Ok so I think for the next meeting we will do, and this is where a breath of the discussion was from the CAMP meeting is looking at planning and surveying designation guidelines there and then also design review and design guidelines and then of course what's often forgotten is public education and outreach we will talk about that as well from the material. And then what I will do is I will have Shan email out the materials I got off the disk that is on the law and then the framework for historic preservation the relevant laws throughout the Fed, State, and local levels and again the historic preservation review process 6E and HRS.

Ms. Griffin: Questions?

Ms. Sheehan: The definition of buildings when we were talking about keeping track of the inventory and the inventory is pretty much going to be buildings that we have done so far but we were also talking about landscapes and cultural sites and it says in this one historic preservation review you know 50 years old district areas or sites over 50 years old part of the job is to nominate some of these things or review them or inventory them on a later date. Is it implying cultural sites? Is it implying cultural landscapes as we talk about them? I mean I know the words are here but I am just wondering do we have to, is that an interpretation of what this Commission would be talking about?

Mr. Jung: I think the law extends to areas and sites to be a whole district. You could say a landscape but there are certain rock features but it could get to the point of certain trees then we might be stretching a little far because we already have a board that regulates that through the Arborist Committee. But for certain landscapes/areas...

Ms. Sheehan: So like a heiau?

Mr. Jung: A heiau definitely because there is historic structures in there the rocks, the stacked rocks right but like in one of these articles it talks about a civil war area field that is on our registry. So there is nothing there except for the field and the field is what is significant in history so it met the criteria to apply the code to say yes it made the registry. So I think here and there is an area of significance in terms of its location I think you can make a colorful argument and say this area should be protected as an historic site because of these reasons.



Ms. Sheehan: Just an example there is by the Pooku Stables there is a heiau and he is doing housing on one side and the other and then he is preserving the middle. I don't know if it ever came to us.

Mr. Jung: It came, the whole preservation plan and he was even looking at doing a conservation easement too. I don't know if that was ever accepted.

Ms. Sheehan: So that is the same thing, that's what you have to do to get them to come in and give us a whole...

Mr. Jung: Right or it could be incumbent on you folks. I think this is a good start that Pat came up with is ok let's pick a district and see if we can find anything that can meet the criteria and start looking in to this.

Ms. Sheehan: Like the path maybe Līhu'e may have cultural landscape things not just buildings and they were talking about iwi underneath Coco Palms and I was just wondering how we interpret that in just this one sentence we have that really talks about what are purview.

Mr. Jung: The fishponds I think are important area for Coco Palms. It is on the State Registry. I don't think it's on the Federal Registry.

Ms. Sheehan: Could we nominate things like that?

Mr. Jung: Yes and Kaaina is going to go through the process now about what it takes to nominate.

Ms. Arinaga: Oh good because there has been something that I have been thinking about for many, many years in Keālia in the midst of the cane field there is a burial ground and I am not sure if it was ever brought forward but this burial site are of plantation people that date back to the early 1900s and so it sits in the middle of the cane field. So how would we, how would one get or wanted to see if it fits the criteria of an historical site?

Mr. Jung: Want to come up and talk about that or do you want to move it on to the next agenda?

Ms. Griffin: Hold that just for a moment and then we will talk about the National Register. Are there any other specific questions for Ian on the presentation? Thank you very much we look forward to part 2.

Mr. Jung: And then keep thinking about what else you guys want to talk about, any topic that you guys want.

Ms. Griffin: Thank you. You know it's such a, back when I was saddling up my mastodon to get here the meetings we didn't have an attorney sitting here with us and I really feel fortunate that the Mayor has given you to us.

**SELECTION OF NEXT MEETING DATE AND AGENDA TOPICS**

The next meeting date was scheduled on April 2, 2015.

**ADJOURNMENT**

The meeting was adjourned at 4:30 p.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Shanlee U. Jimenez', written in a cursive style.

Shanlee U. Jimenez

Secretary

Date: APR 01 2015